

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DARNELL CREDELL,

Plaintiff,

**7:16-cv-857
(GLS/TWD)**

v.

DET. MATT DAWLEY *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

DARNELL CREDELL
Plaintiff, *pro se*
15-B-3607
Orleans Correctional Facility
3531 Gaines Basin Road
Albion, New York 14411

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation and Order by Magistrate Judge Therese Wiley Dancks, duly filed on August 4, 2016. (Dkt. No. 5.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed¹, and the court having reviewed the Report-Recommendation for clear error, it is hereby

ORDERED that the Order and Report-Recommendation and Order (Dkt. No. 5) is **ADOPTED** in its entirety; and it is further

ORDERED that plaintiff's Fourth Amendment illegal search and seizure claim is dismissed without prejudice with leave to amend for failure to state a claim against Sgt. Lawlee; and it is further

ORDERED that plaintiff's Fourth Amendment illegal search and seizure claim is allowed to proceed against defendants Det. Matt Dawley and P.O. J. Giaquinto, and that defendants, or their counsel, are required to file a response as provided for in Rule 12 of the Federal Rules of Civil Procedure; and it is further

ORDERED that plaintiff's Fourteenth Amendment Due Process claim is dismissed without prejudice and with leave to amend for failure to state a claim; and it is further

ORDERED that plaintiff is instructed that any amended complaint be a complete pleading that supersedes his original Complaint in all respects

¹ While plaintiff did not file any objections to the Order and Report-Recommendation, he did file an amended complaint. (Dkt. No. 8.) The amended complaint will be addressed in due course.

(and does not incorporate by reference any portion of his original Complaint.) Plaintiff is directed to comply in all respects with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure, which require, *inter alia*, that the amended complaint contain a short and plain statement of each claim showing that plaintiff is entitled to relief, and that he states his claims in numbered paragraphs, each limited as far as practical to a single set of circumstances; and it is further

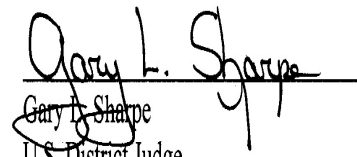
ORDERED that the court affords the plaintiff thirty (30) days from the date of this order, to file an amended complaint in which the plaintiff filed on August 17, 2016, (Dkt. No. 8), a complete pleading that supersedes his original complaint in all respects and shall not include any claims that have been dismissed with prejudice by this court; and it is further

ORDERED that the amended complaint, (Dkt. No. 8), is referred to Magistrate Judge Therese Wiley Dancks for compliance with this court's order; and it is further

ORDERED that the clerk of the court serve a copy of this order upon the parties in accordance with this court's Local Rules.

IT IS SO ORDERED.

August 29, 2016
Albany, New York



Gary L. Sharpe
U.S. District Judge